IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ESSEX INSURANCE COMPANY — PLAINTIFF/COUNTER-DEFENDANT

vs. — Civil Action No. 1:94cv175-D-D

EDDIE ALEXANDER and PAT CARR, individually and d/b/a PINE RIDGE SPEEDWAY, INC. — DEFENDANTS/COUNTER-CLAIMANTS

vs.

WILLIAM WHITE — DEFENDANT

MEMORANDUM OPINION

Presently before the court is the motion of the plaintiff, Essex Insurance Company (Essex), for the entry of summary judgment on its behalf. Finding the motion well taken, the same shall be granted.

Factual Summary

The instant action arises from injuries resulting from the defendant William White's attendance at the Pine Ridge Speedway, a locale for automobile racing in Baldwyn, Mississippi. While attending a race held at the speedway on September 18, 1993, Mr. White entered the "pit area" and apparently was watching the current race while sitting on a race car trailer. A race car in the pit area, while moving in reverse gear, struck the trailer and inflicted injuries upon Mr. White.

Essex had issued a policy of insurance covering potential liabilities of the Pine Ridge Speedway for the relevant time period. An endorsement to this policy reads in relevant part:

> It is agreed that this policy does not cover claims arising . . . [o]ut of loss or injury to all persons and

> property in the area known as the "pit area" or "staging area," if same pertains to this risk . . .

Essex's Policy of Insurance, Endorsement #2.

Essex filed this action, seeking declaratory relief from this court stating that Essex is not liable for the injuries that Mr. White suffered as a result of this September 18, 1993 accident, and that Essex is not obligated to defend Pine Ridge Speedway, Eddie Alexander or Pat Carr in any suits or claims resulting from this accident. The defendants Pine Ridge, Alexander and Carr counterclaimed, seeking damages for the refusal of Essex to continue its defense of the defendants Pine Ridge, Alexander and Carr in a state court action by White for his injuries.

Discussion

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986);

Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. THE ESSEX POLICY AND ENDORSEMENT #2

The gist of the controversy in this matter centers around the "pit area" exclusion contained in the policy of insurance issued by Essex. The parties do not dispute that Mr. White was injured while in the pit area, and apparently do not dispute that his injury stems from a race car driven in reverse gear while within the pit area. Essex asserts that the exclusion denies coverage for any and all injuries occurring within the pit area, while the defendants take the position that this exclusion only denies coverage for an injury which 1) occurs within the pit area, and 2) is the result of the risk of being in the pit area.

The interpretation of an insurance policy is a question of law for the court when the meaning of the terms is clear and unambiguous. Aero Int'l, Inc. v. United States Fire Ins. Co., 713 F.2d 1106, 1109 (5th Cir. 1983); Reece v. State Farm Fire & Cas. Co., 684 F. Supp. 140, 143 (N.D. Miss. 1987). Because federal jurisdiction is premised in this case upon diversity of

citizenship, the substantive law of Mississippi governs the policy's interpretation. Gladney v. Paul Revere Life Ins. Co., 895 F.2d 238, 241 (5th Cir. 1990). This court must construe the policy in a manner that effectuates the party's intentions. Western Line Consol. School Dist. v. Continental Cas. Co. 632 F. Supp. 295, 302 (N.D. Miss. 1986)(citing Monarch Ins. Co. of Ohio v. Cook, 336 So.2d 738, 741 (Miss. 1976)). The foundation for determining this intent must be gleaned from the express language of the policy. Under Mississippi law, insurance contracts must be construed exactly as written when they are clear and unambiguous, regardless of an apparently harsh consequence to the insured. See Foreman v. Continental Cas. Co., 770 F.2d 487, 489 (5th Cir. 1985).

However, the Mississippi Supreme Court has held that contractual provisions are ambiguous when they are susceptible to two reasonable interpretations, or when various provisions are in direct conflict to one another, or when terms are unclear or of doubtful meaning. Dennis v. Searle, 457 So.2d 941, 945 (Miss. 1984). In analyzing the policy, the court may neither create an ambiguity where none exists, nor make a new contract for the parties. Brander v.Nabors, 443 F. Supp. 764, 769 (N.D. Miss. 1978). Similarly, a court should not strain to find an ambiguity, but must rely on the clear, precise language of the policy provisions. Id.

In this case, the policy exclusion plainly states that the policy will not be extended to cover any injuries to a person in the pit area **"if same pertains to this risk."** The plaintiff's

interpretation of this provision would make these final words superfluous. If the exclusion were meant to preclude coverage for all injuries occurring within the pit area as Essex would have this court determine, the words "if same pertains to this risk" are entirely unnecessary. This court will not presume that the words of any contract, including a policy of insurance, have no meaning. It seems to the undersigned that the only logical interpretation to be given to this exclusion in light of all of the words contained therein is that the policy will not cover injuries to person or property in the pit area if the injuries sustained are of a type relative to particular risks of being present in the pit area, as opposed to other areas for which the policy does provide protection. If this were not the intent of the parties with regard to this exclusion, then this policy provision is certainly ambiguous and this court must construe it against its drafter, Essex Insurance. Pemberton v. State Farm Mut. Auto Ins. Co., 803 F. Supp. 1187, 1192 (S.D. Miss. 1992); Nationwide Mut. Ins. Co. v. Garriga, 636 So. 2d 658, 662 (Miss. 1994). In either event, the reading that this court has already given will control.

III. THE ACCIDENT IN QUESTION

Even giving the exclusion a more limited application reading than the plaintiff asserts does not preclude this court from granting declaratory relief in this case. Mr. White was injured as a result of a racecar traveling in reverse gear through the pit area. It is the opinion of this court that no reasonable juror could determine that the risk of being injured by a racecar

attempting to enter or leave the pit area in conjunction with the normal operation of an automobile race is not a risk "pertaining to" a party's presence in the pit area itself. There is no genuine issue of material fact as to this matter, and the plaintiff is entitled to a judgment as a matter of law.

IV. THE DEFENDANTS' COUNTERCLAIM

The defendants Pine Ridge, Alexander and Carr filed a counterclaim against the plaintiff for damages suffered because of Essex's failure to defend them in a state court action based upon White's injuries. As this court has already determined that Essex has no duty to defend these defendants against Mr. White's action, this counterclaim is without merit. The plaintiff is entitled to the entry of judgment as a matter of law on this counterclaim.

Conclusion

There are no genuine issues of material fact in this cause, and the plaintiff is entitled to the entry of judgment as a matter of law. The motion of the plaintiff for the entry of summary judgment shall be granted.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of December, 1995.

United States District Judge

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ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the motion of the plaintiff for the entry of summary judgment on its behalf is hereby GRANTED;

2) the plaintiff Essex Insurance has no contractual duty under Pine Ridge's policy of insurance to defend or indemnify defendants Pine Ridge, Alexander or Carr with regard to Mr. White's claims in this matter;

3) the counterclaim of the defendants Pine Ridge, Alexander and Carr is hereby DISMISSED; and

4) this case is CLOSED.

SO ORDERED, this the _____ day of December, 1995.

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United States District Judge